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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,499	09/15/2003	Richard Johnson	P0313	5881
7590		08/02/2004	EXAMINER	
Burkhart & Burkhart		LEE, Y MY QUACH		
Patent Attorneys		ART UNIT		
940 Dakota Avenue		PAPER NUMBER		
Whitefish, MT 59937		2875		

DATE MAILED: 08/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/663,499

Applicant(s)

JOHNSON, RICHARD

Examiner

Y Quach Lee

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### ***DETAILED ACTION***

#### ***Drawings***

1. The drawing figure 6 is objected to as failing to comply with 37 CFR 1.84(p)(5) because it includes the following reference signs (H) and (12') not mentioned in the description. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

#### ***Specification***

2. The disclosure is objected to because of the following informalities: Page 6, the brief description of drawing figure 6 is missing. Appropriate correction is required.

#### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1 to 5 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 9 of U.S. Patent No. 6,619,816.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the present application requires an elongated generally tubular light transmission element and claims 1, 5 and 6 of Patent '816 set forth a hollow tube light transmission element. One person skilled in the art would conclude that the invention defined in

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the claim of the pending application is an obvious variation of the invention defined in the claims of the patent because it is known that tubular is defined as having a hollow tube and the tube is defined as a hollow cylinder especially one that conveys a fluid or functions as a passage of which the feature would inherently be elongate.

5. Claims 6 to 10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 10 of U.S. Patent No. 6,619,816 in view of Coleman et al.

Claims 1 to 10 of Patent '816 disclose the invention substantially as claimed. However, claims 1 to 10 of Patent '816 do not disclose that the hollow tubular light transmission element, readable as an elongated tubular light transmission element, having a first end secured to the light device, a second end secured to the edible confection and serving to space the light device from the edible confection.

Coleman et al. teach an elongated generally tubular light transmission element (10) having a first end secured to the light device with a second end (14) secured to the edible confection and serving to space the light device from the edible confection while receiving novelty item such as toy (34) or candy (column 2, line 66).

It would have been obvious to one skilled in the art to provide the light transmission element of claims 1 to 10 of Patent '816 with a first end secured to the light device and a second end to the edible confection, as shown by Coleman et al., for serving to space the light device from the edible confection while receiving novelty item such as toy or candy.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cook et al., Bennington and Fernandez et al. are cited to show other pertinent novelty-containing light transmission tubes and light devices for confectionery products.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Y Quach Lee whose telephone number is 571-272-2373. The examiner can normally be reached on Tuesday and Thursday from 8:30 am to 4:30 pm.

Any inquiry of a general nature or relating to the status of this application or proceeding

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should be directed to the Customer Service whose telephone number is 571-272-2815.

Y. Q.  
July 25, 2004



Y Quach Lee  
Patent Examiner  
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